

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

COUNTY OF BUTLER;	:	CIVIL ACTION
COUNTY OF FAYETTE;	:	
COUNTY OF GREENE;	:	Case No.: 2:20-cv-00677-WSS
COUNTY OF WASHINGTON;	:	
NANCY GIFFORD and MIKE GIFFORD	:	The Hon. William S. Stickman, IV,
husband and wife, d/b/a	:	District Judge
DOUBLE IMAGE STYLING SALON;	:	
PRIMA CAPELLI, INC., a Pennsylvania	:	
Corporation;	:	MOTION FOR ATTORNEYS' FEES
MIKE KELLY;	:	
MARCI MUSTELLO;	:	
DARYL METCALFE;	:	<i>Electronically Filed and Served</i>
TIM BONNER;	:	
STEVEN SCHOEFFEL;	:	
PAUL F. CRAWFORD, t/d/b/a	:	
MARIGOLD FARM;	:	
CATHY HOSKINS, t/d/b/a	:	
CLASSY CUTS HAIR SALON;	:	
R.W. McDONALD & SONS, INC.,	:	
STARLIGHT DRIVE-IN, INC., a Pennsylvania	:	
Corporation; and	:	
SKYVIEW DRIVE-IN, LLC, a Pennsylvania	:	
Limited Liability Company,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
THOMAS W. WOLF, in his official capacity as	:	
Governor of the Commonwealth of	:	
Pennsylvania, and	:	
RACHEL LEVINE, MD, in her official	:	
capacity as Secretary of the	:	
Pennsylvania Department of Health,	:	
	:	
Defendants.	:	
	:	
	:	

MOTION FOR ATTORNEYS' FEES

Plaintiffs, NANCY GIFFORD and MIKE GIFFORD husband and wife, d/b/a DOUBLE IMAGE STYLING SALON; PRIMA CAPELLI, INC., a Pennsylvania Corporation; MIKE KELLY; MARCI MUSTELLO; DARYL METCALFE; TIM BONNER; STEVEN SCHOEFFEL; PAUL F. CRAWFORD, t/d/b/a MARIGOLD FARM; CATHY HOSKINS, t/d/b/a CLASSY CUTS HAIR SALON; R.W. McDONALD & SONS, INC., STARLIGHT DRIVE-IN, INC., a Pennsylvania Corporation; and SKYVIEW DRIVE-IN, LLC, a Pennsylvania Limited Liability Company (hereafter the “**Prevailing Plaintiffs**”)¹, by and through their undersigned counsel, file the within Motion for Attorneys’ Fees (the “**Motion**”), and in support thereof, respectfully state the following:

1. On May 7, 2020, the Prevailing Plaintiffs filed a 5 count Complaint (ECF Doc. No. 1) against Defendants under 42 U.S.C.A. § 1983 asserting the following claims:
 - a. Count I – Violation of the Taking Clause,
 - b. Count II – Substantive Due Process,
 - c. Count III – Procedural Due Process,
 - d. Count IV – Violation of the Equal Protection Clause, and
 - e. Count V – Violation of the First Amendment.
2. On May 20, 2020, the Prevailing Plaintiffs filed a “Motion for Speedy Hearing of Declaratory Judgment Action Pursuant to [Federal] Rule [of Civil Procedure] 57” and Brief in Support (ECF Doc. Nos. 10 and 11).
3. On May 27, 2020, this Court held argument on the Prevailing Plaintiffs’ Motion for Speedy Hearing. (ECF Doc. No. 14)

¹ Plaintiffs, County of Butler, County of Fayette, County of Greene, and County of Washington were dismissed from the litigation by this Court and are not parties to the requested relief of this Motion. (ECF Doc. No. 80).

4. On May 28, 2020, the Court issued a “Memorandum Opinion and Order of Court” (ECF Doc. No. 15) granting the Prevailing Plaintiffs’ request for a Speedy Hearing at Count II – Substantive Due Process, Count IV – Violation of the Equal Protection Clause, and Count V – Violation of the First Amendment.

5. The following proceedings were held subsequent to the Court’s Order:

- a. A record of Affidavits and Exhibits was filed by the Prevailing Plaintiffs (ECF Doc. Nos. 24-34, 42, 47, 54, 57, 59, 60, 64, 68, 71, and 73);
- b. Pre-Hearing Briefs were filed (ECF Doc. Nos. 36 and 40);
- c. Hearings were held on July 17 and 22, 2020 (ECF Doc. Nos. 74 and 75);
- d. Post-Hearing Briefs were filed (ECF Doc. Nos. 56, 66, and 69).

6. On September 14, 2020, this Court entered an Order in favor of the Prevailing Plaintiffs (ECF Doc. No. 80).

7. On September 22, 2020, this Court entered a “Final Declaratory Judgment” on Count II – Substantive Due Process, Count IV – Violation of the Equal Protection Clause, and Count V – Violation of the First Amendment (ECF Doc. No. 90).

8. Accordingly, the Prevailing Plaintiffs file the within Motion pursuant to 42 U.S.C.A. § 1988 having prevailed on the merits of their claims.

9. The Prevailing Plaintiffs’ Motion is timely pursuant to Federal Rule of Civil Procedure 54(d)(2).

10. In support of the within Motion, the following documents are submitted separately and contemporaneously herein as Exhibits:

- a. Time records, maintained in the office of the undersigned counsel for the Prevailing Plaintiffs from May 2, 2020 – September 14, 2020 (*See* Exhibit “A”);
- b. An affidavit from the undersigned counsel, and two other attorneys admitted in the Western District of Pennsylvania, regarding the rate of \$175.00/hour, for

attorney's fees in the relevant community for cases by attorneys of similar training, skills, and experience (*See* Exhibit "B"); and

c. The Curriculum Vitae of the undersigned counsel (*See* Exhibit "C").

11. Based upon the foregoing, the Prevailing Plaintiffs are entitled to reasonable attorneys' fees and costs.

WHEREFORE, the Prevailing Plaintiffs respectfully request that this Court:

- a. Enter the attached Proposed Order, directing Defendants to pay the sum of \$135,789.80 to the Prevailing Plaintiffs for 776.50 hours of work at a rate of \$175.00/hour for attorneys and \$100.00/hour for paralegals, and costs, within 30 days from September 28, 2020, or within 30 days of the adjudication of Defendants' appeal pending before the United States Court of Appeals for the Third Circuit (ECF Doc. Nos. 92 and 93).

Respectfully Submitted,

**DILLON McCANDLESS KING
COULTER & GRAHAM, LLP**

Dated: September 28, 2020

By: /s/ Thomas W. King, III
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Counsel for the Prevailing Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **MOTION FOR ATTORNEYS' FEES** was served on all counsel of record via CM/ECF, this 28th day of September, 2020.

/s/ Thomas W. King, III

Thomas W. King, III